



**Billing code 3410-02 P**

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 984**

**[Doc. No. AMS-FV-13-0056; FV13-984-1 FR]**

**Walnuts Grown in California; Increased Assessment Rate**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases the assessment rate established for the California Walnut Board (Board) for the 2013-14 and subsequent marketing years from \$0.0175 to \$0.0189 per kernelweight pound of merchantable walnuts. The Board locally administers the marketing order, which regulates the handling of walnuts grown in California. Assessments upon walnut handlers are used by the Board to fund reasonable and necessary expenses of the program. The marketing year begins on September 1 and ends on August 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

**EFFECTIVE DATE:** [INSERT DATE 1 DAY AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Andrea Ricci, Marketing Specialist, or Martin Engeler, Regional Director,

California Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906, or E-mail: Andrea.Ricci@ams.usda.gov or Martin.Engeler@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutney, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jeffrey.Smutney@ams.usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866 and 13563.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California walnut handlers are subject to assessments. Funds to administer the order are derived

from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts beginning on September 1, 2013, and continue until amended, suspended, or terminated.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Board for the 2013-14 and subsequent marketing years from \$0.0175 to \$0.0189 per kernelweight pound of merchantable walnuts handled.

The California walnut marketing order provides authority for the Board, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are growers and handlers of California walnuts. They are familiar with the Board's needs and with the costs of goods and services in their local area and are therefore in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2011-12 and subsequent marketing years, the Board recommended, and USDA approved, an assessment rate of \$0.0175 per kernelweight pound of merchantable walnuts that would continue in effect from year to year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other information available to USDA.

The Board met on June 6, 2013, and unanimously recommended 2013-14 expenditures of \$10,166,860 and an assessment rate of \$0.0189 per kernelweight pound of merchantable walnuts. In comparison, last year's budgeted

expenditures were \$8,840,000. The assessment rate of \$0.0189 is \$0.0014 per pound higher than the rate currently in effect. The quantity of assessable walnuts for the 2013-14 marketing year is estimated at 486,000 tons (inshell), which is 6,000 tons higher than last year's. At the recommended higher assessment rate of \$0.0189 per kernelweight pound, the Board should collect approximately \$8,266,860 in assessment income. Assessment income plus funds from the Board's authorized prior year's carry-in financial reserve and Foreign Agricultural Service (FAS) funding would be adequate to cover its 2013-14 anticipated expenditures of \$10,166,860.

The major expenditures recommended by the Board for the 2013-14 marketing year include \$830,000 for employee expenses, \$146,500 for office expenses, \$225,000 for operating expenses, and \$8,965,360 for program expenses, which include domestic market development, production research, post-harvest research, and industry communications. In comparison, budgeted expenses for these items for the 2012-13 marketing year were \$797,000, \$119,000, \$219,000, and \$7,705,000, respectively.

The assessment rate recommended by the Board was derived by evaluating expected shipments of California

walnuts certified as merchantable, budgeted expenses, the level of available prior year's carry-in financial reserve, and the desired 2013-14 ending financial reserve. The Board met on June 6, 2013, and unanimously approved using a three prior years' average to formulate the 2013-14 estimate of 486,000 tons (inshell) for merchantable shipments. Pursuant to §984.51(b) of the order, this figure is converted to a merchantable kernelweight basis using a factor of 0.45 (486,000 tons x 2,000 pounds per ton x 0.45), which yields 437,400,000 kernelweight pounds. The Board determined that it could utilize \$1.9 million from its carry-in financial reserve and still maintain an adequate 2013-2014 ending financial reserve. The remaining \$8,266,860 needed to meet budgeted expenses would need to be raised through assessments. Dividing the \$8,266,860 in necessary assessment revenue by 2013 estimated merchantable shipments of 437,400,000 kernelweight pounds, results in an assessment rate of \$0.0189 per pound. Income derived from handler assessments, combined with funds from the Board's financial reserve and FAS funding for the last year of a three-year project, would adequately cover budgeted expenses.

Reserve funds by the end of the 2013-14 marketing year are projected to be \$6,234,895, which is well within the maximum permitted by the order of approximately two marketing years' expenses. Section 984.69 of the order authorizes the Board to maintain a financial reserve of not more than two years' budgeted expenses. Excess assessment funds may be retained in the reserve or may be used temporarily to defray expenses of the subsequent marketing year, but if so used, must be made available to the handlers from whom they were collected within five months after the end of the marketing year.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Board or other available information.

Although this assessment rate will be in effect for an indefinite period, the Board will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations to modify the assessment rate. The dates and times of Board meetings are available from the Board or USDA. Board meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Board

recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2013-14 budget and those for subsequent marketing years would be reviewed and, as appropriate, approved by USDA.

### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 4,100 growers of California walnuts in the production area and approximately 90 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small



Business Administration (SBA) as those having annual receipts of less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$7,000,000. (13 CFR 121.201)

Current census data from the USDA's National Agricultural Statistics Service (NASS) indicates that approximately 90 percent of California's walnut farms are smaller than 100 acres.

NASS reports that the average yield for the 2011-12 crop was 1.88 tons per acre and the average price received for the 2011-12 crop was \$2,900 per ton.

A 100-acre farm with an average yield of 1.88 tons per acre would therefore have been expected to produce about 188 tons of walnuts during the 2011-12 season. At \$2,900 per ton, that farm's production would have had an approximate value of \$545,200. Assuming that the majority of California's walnut farms are smaller than 100 acres, it could be concluded that the majority of the growers had receipts of less than \$545,200 in 2011-12, which is well below the SBA threshold of \$750,000. Thus, the majority of California's walnut growers would be classified as small growers according to SBA's definition.

According to information supplied by the industry, approximately 40 percent of California's walnut handlers shipped merchantable walnuts valued under \$7,000,000 during the 2011-12 marketing year and would therefore be considered small handlers according to the SBA definition.

This rule increases the assessment rate established by the Board and applicable to merchantable walnut handlers for the 2013-14 and subsequent marketing years from \$0.0175 to \$0.0189 per kernelweight pound. The Board unanimously recommended 2013-14 expenditures of \$10,166,860 and an assessment rate of \$0.0189 per kernelweight pound of merchantable walnuts. The assessment rate of \$0.0189 is \$0.0014 higher than the 2012-13 rate. The quantity of merchantable walnuts for the 2013-14 marketing year is estimated at 486,000 tons inshell weight, or 437,400,000 pounds kernelweight. Thus, the \$0.0189 rate should provide \$8,266,860 in assessment income. Assessment income, along with funds from the Board's authorized prior year's carry-in financial reserve, plus FAS funding for the last year of a three-year project would adequately cover its 2013-14 anticipated expenditures.

The major expenditures recommended by the Board for the 2013-14 marketing year include \$830,000 for employee

expenses, \$146,500 for office expenses, \$225,000 for operating expenses, and \$8,965,360 for program expenses, which include domestic market development, production research, post-harvest research, and industry communications. In comparison, budgeted expenses for these items for the 2012-13 marketing year were \$797,000, \$119,000, \$219,000, and \$7,705,000, respectively.

The Board recommended the increased assessment rate because the rate currently in effect would not generate sufficient revenue to meet its budgeted expenses. The increased assessment rate applied to estimated assessable walnuts in the 2013-14 marketing year is expected to generate sufficient revenue to meet expenses, when combined with funds from the financial reserve and grant funds from FAS.

Prior to arriving at this budget, the Board considered alternative expenditure levels but ultimately decided that the recommended levels were reasonable to properly administer the order.

According to the National Agricultural Statistical Service (NASS), the season average grower prices for the years 2010 and 2011 were \$2,040 and \$2,900 per ton, respectively. These prices provide a range within which

the 2013-14 season average prices could fall. Dividing these average grower prices by 2,000 pounds per ton provides an inshell price per pound range of \$1.02 to \$1.45. Dividing these inshell prices per pound by the 0.45 conversion factor (inshell to kernelweight) established in the order, yields a 2013-14 price range estimate of \$2.27 to \$3.22 per kernelweight pound of merchantable walnuts.

Utilizing these estimates and the assessment rate of \$0.0189 per kernelweight pound, estimated assessment revenue as a percentage of total estimated grower revenue should likely range between 0.59 and 0.83 percent for the 2013-14 marketing year (assessment rate divided by price per kernelweight pound).

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to growers. However, these costs are offset by the benefits derived from the operation of the marketing order. In addition, the Board's meeting was widely publicized throughout the California walnut industry. All interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all

Board meetings, the June 6, 2013, meeting was a public meeting. All entities, both large and small, were able to express their views on this issue.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0178 (Walnuts Grown in California). No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. As noted in the initial regulatory flexibility analysis, USDA has not identified any Federal rules that duplicate, overlap, or conflict with this final rule.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide more opportunities for

citizens to access Government information and services, and for other purposes.

A proposed rule concerning this action was published in the **Federal Register** on September 17, 2013 (78 FR 57101). Copies of the proposed rule were also made available to all walnut handlers by Board staff. Finally, the proposal was made available through the internet by the USDA and the Office of Federal Register. A 30-day comment period ending October 17, 2013, was provided for interested persons to respond to the proposal. One comment was received. The commenter raised a question about the effect of this action in regard to black walnut trees. Black walnut trees aren't regulated by the marketing order; therefore, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at:  
[www.ams.usda.gov/MarketingOrderSmallBusinessGuide](http://www.ams.usda.gov/MarketingOrderSmallBusinessGuide). Any questions about the compliance guide should be sent to Jeffrey Smutney at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation

submitted by the Board and other available information, it is hereby found that this rule, and hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) the 2013-14 marketing year began on September 1, 2013, and the marketing order requires that the rate of assessment for each marketing year apply to all merchantable walnuts handled during the year; (2) the Board needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis; and (3) handlers are aware of this action, which was unanimously recommended by the Board at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 30-day comment period was provided for in the proposed rule.

**List of Subjects in 7 CFR Part 984**

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is amended as follows:

PART 984 - WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 984.347 is revised to read as follows:

**§ 984.347 Assessment rate.**

On and after September 1, 2013, an assessment rate of \$0.0189 per kernelweight pound is established for California merchantable walnuts.

Dated: December 17, 2013

Rex A. Barnes  
Associate Administrator  
Agricultural Marketing Service

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